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March 1, 2012

Mr. Corbin Davis
Clerk
Michigan Supreme Court
925 W Ottawa Street
Lansing, MI 48915

Re: ADM File No. 2010-26 (Proposed Amendment to MCR 7.210 & MCR 7.212)

Dear Mr. Davis:

I write in support of the proposed amendment to Michigan Court Rules 7.210 and 7.212, for situations when a transcript or portion of a transcript is unavailable. In its current form, it is often practically impossible for indigent criminal defendant-appellants to comply with MCR 7.210(B)(2).

In the experience of the State Appellate Defender Office, we are often not informed that some part of the proceedings, such as the final jury instructions, was not able to be transcribed. Our staff attorneys often do not learn that a portion of the record is missing until the attorney is reading the transcripts that were produced in accordance with the Claim of Appeal/Order Appointing Counsel. The Claim of Appeal/Order Appointing Counsel gives the court reporter 91 days to file the transcripts in appeals from trials. Thus, appellant may not learn that a portion of the record is missing until well after the current deadline for acting to settle the record. Thus, I support extending the time for taking steps to settle the record under MCR 7.210(B)(2) from 14 days after filing the claim of appeal to no later than 56 days after the filing of any available transcripts.

Other comments have questioned what would occur under the proposed language if there are no available transcripts at all. To meet this concern, I suggest adjusting the proposed new language in MCR 7.210(B)(2)(a) to: "No later than 56 days after the filing of the available transcripts or, if no transcripts are available, within 14 days after the filing of the claim of appeal, ..."

I support the other proposed changes to MCR 7.210(B)(2), as well, because the current version's requirement that in every case appellant file a proposed settled statement of facts to serve as a substitute for the missing transcript is impractical for indigent criminal defendant-appellants. In the vast majority of appeals by indigent criminal defendants their appellate counsel was not their attorney in the proceedings below and thus their appellate counsel has no personal knowledge of what occurred during the missing portion of the record. Sometimes the defendant's appellate attorney has difficulty getting the defendant's trial attorney to cooperate and/or has difficulty reaching the trial prosecutor and trial defense attorney due to their high volume of work in the courtroom. Moreover, due to the considerable passage of time referenced in paragraph two above and due to the indigent criminal defendant usually having only an unsophisticated knowledge of the law and sometimes having intellectual or psychological impairments, the defendant himself may not be the most helpful resource to his appellate counsel in trying to produce a proposed settled statement of facts. SADO often finds an evidentiary hearing to be necessary to settle the record.

The corresponding amendment to MCR 7.212(A)(1)(a)(iii) is necessary so that an appellant maintains the ability to file a 56-day motion under MCR 7.208(B)(1) or a brief on appeal after review of the full record.

I thank the Court for its consideration.

Sincerely,

Dawn Van Hoek

Dawn Van Hoek
Director